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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 26, 2002

PETITION OF

CAVALIER TELEPHONE, LLC

CASE NO. PUC-2002-00088

For Injunction Against Verizon
Virginia Inc. for Violations of
Interconnection Agreement and For
Expedited Relief to Order Verizon
to Provision Unbundled Network
Elements in Accordance with the
Telecommunications Act of 1996

ORDER GRANTING INTERVENTIONS

On October 28, 2002, the State Corporation Commission
("Commission") issued an Order Directing Investigation in this
case as follows:

In the instant proceeding, pursuant to 5 VAC
5-20-100 B and 5 VAC 5-20-80 D, the Staff is
directed to conduct an investigation into
Verizon Virginia's policies and practices in
provisioning DS-1 UNE loops to Cavalier.
The Staff is directed to file a report on
its investigation. The Staff's report also
may include a brief on any legal issues
relevant to its investigation.¹

On November 4, 2002, Allegiance Telecom of Virginia, Inc.
("Allegiance"), filed a Motion to Intervene.

On November 8, 2002, NTELOS Network Inc., and R&B Network
Inc. (jointly "NTELOS"), filed a Motion to Intervene and Motion

to Expand Investigation. NTELOS requests that the investigation ordered be expanded to include provisioning by Verizon Virginia Inc. ("Verizon Virginia"), of DSL loops and Voice Grade loops.

On November 12, 2002, Covad Communications Company ("Covad") filed a Motion to Intervene.

On November 13, 2002, AT&T Communications of Virginia, LLC ("AT&T"), filed a Motion to Intervene.²

Allegiance, NTELOS, Covad, and AT&T all state that if granted intervention, they will abide by the procedural schedule already established.

On November 15, 2002, Verizon Virginia filed an opposition to all pending motions for intervention. Verizon Virginia states that this proceeding was initiated by Cavalier Telephone, LLC ("Cavalier"), pursuant to 5 VAC 5-20-100 B seeking enforcement of its interconnection agreement with Verizon Virginia. Verizon Virginia contends that petitions brought under 5 VAC 5-20-100 B do not permit intervention by other parties. Verizon Virginia cites a hearing examiner's ruling in

¹ Pursuant to 5 VAC 5-20-80 D, "[t]he commission staff may appear and participate in any proceeding in order to see that pertinent issues on behalf of the general public interest are clearly presented to the commission."

² To the extent that AT&T references Verizon Virginia's "no build" or "no facilities" policy in the provision of interoffice facilities ("IOF"), the Commission notes that IOF is not included in this investigation.

an arbitration case, applying our former Rule 4:7 on intervention, for this interpretation.³

The Commission notes that 5 VAC 5-20-100 B does not explicitly provide for participation in "Other proceedings" by interested parties. We recognize that in "Other proceedings" under 5 VAC 5-20-100 A, interested persons may comment and, under 5 VAC 5-20-100 C, interested parties may participate.

We decline to find that the absence of an explicit provision in 5 VAC 5-20-100 B renders interested parties strictly ineligible to participate. In another case brought under 5 VAC 5-20-100 B, we granted leave to an outside party to participate over similar objections based upon Rule 100 B's (5 VAC 5-20-100 B) silence on participation by interested persons. Petition of Virginia Bankers Association, Case No. BFI-2002-00015, Order Requiring Briefs and Requests for Hearing, issued October 25, 2002 ("VBA Order"). Although we find no bar to intervention under 5 VAC 5-20-100 B, we will, as in the VBA Order, invoke the provisions of 5 VAC 5-20-10 to waive any such limitation because of the important public policy issue concerning Verizon Virginia's policies and practices in

³ Petition of Cavalier Telephone, LLC, Case No. PUC-1999-00191, Hearing Examiner Ruling issued January 19, 2001.

provisioning DS-1 UNE loops. We find that permitting the interventions will not unreasonably prejudice Verizon Virginia.⁴

Accordingly, Allegiance, NTELOS, Covad, and AT&T should be granted intervention in this case. With the addition of four new participants, we also will modify slightly the procedural schedule to provide the participants and Verizon Virginia additional time to submit comments.

Finally, in its Motion to Expand Investigation, NTELOS states that if the Commission "feels that NTELOS's request to expand the investigation . . . will delay these proceedings, NTELOS will withdraw its [motion] in hopes the Commission can investigate DSL and Voice Grade loop provisioning by Verizon in another proceeding." We will deny NTELOS's Motion to Expand Investigation.

Accordingly, IT IS THEREFORE ORDERED THAT:

(1) Allegiance, NTELOS, Covad, and AT&T are hereby granted leave to intervene.

(2) NTELOS's Motion to Expand Investigation is denied.

(3) On or before December 9, 2002, Cavalier, Allegiance, NTELOS, Covad, and AT&T may file comments on the investigation.

⁴ In addition, as we noted in the VBA Order (fn.3), "the specific drafting by a complainant should not preclude the widest possible participation when our decision will have industry-wide impact."

(4) On or before December 30, 2002, Verizon Virginia may file a responsive pleading to the comments filed on December 9, 2002.

(5) On or before January 30, 2003, the Staff shall submit a report on its investigation, which may include a brief on any legal issues relevant to its investigation.

(6) On or before February 13, 2003, all parties may file comments on the Staff's report and/or a request for hearing. Any request for hearing shall state why the issues raised cannot be adequately addressed in written comments.

(7) Pursuant to Rule 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure, a Hearing Examiner is assigned to this case for the purpose of ruling on any discovery matters that may arise in this proceeding.

(8) This case is hereby continued pending further order of the Commission.